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11
12 **UNITED STATES DISTRICT COURT**
13
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 EDMOND CARMONA, ABRAHAM
16 MENDOZA, ROGER NOGUEIRA,
17 THOMAS ARRIOLA, BURNETT
18 BRULEE, GYORGY DIAZ, DANIEL
19 ETCHEPARE, RAUL QUIROZ,
20 SANTOS FONSECA-ROMERO, MARC
21 MORAN, on behalf of themselves and all
22 others similarly situated, and all other
23 aggrieved employees,

24 Plaintiffs,

25 v.

26 DOMINO'S PIZZA, LLC, a Michigan
27 Corporation, and DOES 1-10, inclusive,

28 Defendants.

CASE NO. 8:20-cv-01905-JVS-
(JDEx)

Hon. James V. Selna

**DECLARATION OF AASHISH Y.
DESAI IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL
OF CLASS ACTION
SETTLEMENT**

HEARING SCHEDULE

Date: December 22, 2025
Time: 1:30 p.m.
Dept.: 10C

1 with the drivers asking for “status reports” and information throughout the years. Nor
2 did I record each and every email and phone call I had with opposing counsel working
3 out discovery issues, mediation dates, and finalizing this global settlement. Nor did
4 I record the numerous conversations I had with my senior paralegal and senior
5 associate discussing litigation, certification and settlement strategy. To avoid
6 duplicative work, tasks were carefully assigned. All services are carefully billed by
7 just three team members:

- 8 ○ **Aashish Desai** (lead attorney, rate: \$1,250/hour) – Primarily handles
9 analysis, pleadings, appellate arguments, hearings, conferences, and high-
10 level strategy.
- 11 ○ **Adrienne De Castro** (senior associate attorney, rate: \$950/hour) – Focuses
12 on drafting pleadings, discovery responses, research, and settlement
13 documents.
- 14 ○ **Sonia Nava** (senior paralegal, rate: \$290/hour) – Manages coordination,
15 filings, client communications, and administrative tasks.

16
17 5. In fact, I anticipate that 20-50 more hours will be required to obtain
18 preliminary and final approval, respond to communications from the class members,
19 monitor the settlement administration, and monitor the Defendants’ compliance with
20 the terms and conditions of the Settlement Agreement. To assist the Court, I have
21 filed my firm’s time records up to the date of this filing.

22 6. We provide our time records in advance of final approval in full
23 transparency to the Court and the Class Members. A summary of rates and hours
24 expended by my firm is set forth below:

25 //

26 //

<u>Biller</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Desai	716.48	1250	\$ 895,596
De Castro	192.49	950	\$ 182,861
Nava (Paralegal)	149.75	290	\$ 43,426
	<u>1058.71</u>		<u>\$ 1,121,883</u>

7. These records reflect that my firm has expended (advanced) approximately **\$23,192** in costs to fund the litigation against the Defendant. Our lodestar for over **1,058** hours is over **\$1,121,883**: The billing spans from June 2020 to November 2025, covering initial case intake, filings in state and federal courts, motions (e.g., to compel arbitration, stay proceedings), appeals to the Ninth Circuit Court of Appeals (multiple rounds, including remands influenced by SCOTUS decisions like *Southwest Airlines Co. v. Saxon*), petitions to the U.S. Supreme Court, discovery, mediation, and settlement preparations.

8. My firm poured significant time and resources into this case including filing a concurrent case, and significant appellate litigation. During this time, my firm was naturally unable to perform work on other legal cases; indeed, I declined many potential cases due to my firm’s significant obligations to this matter. My firm also had to review tens of thousands of pages of documents that Domino’s produced, and prepared substantive and detailed discovery responses for all the Named Plaintiffs. All this work was in preparation for class certification.

9. Prior to filing for class certification, the parties agreed to participate in a day-long mediation in Los Angeles with Joel Grossman. After extensive day-long negotiations where all but one of the Named Plaintiffs was physically present, the parties reached a settlement and signed a Memorandum of Understanding setting forth the general terms of the settlement. The parties spent the next month drafting and editing the Stipulation of Class Action Settlement.

- November-December: Reply to MTC Arb (7.60 hours by Desai: \$9,500); order denying MTC Arb (3.90 hours by Desai: \$4,875); Joint Rule 26 Report (3.60 hours by Desai: \$4,500).

Notable Phase: Shift from state to federal jurisdiction; early arbitration fight under FAA Section 1 residual clause.

2021 (Appeals and Stays – Total Billed: ~\$200,000)

Focus: Appeal of arbitration denial to Ninth Circuit, mediation, discovery, oral arguments.

Key Entries:

- January-March: Notice of Appeal (1.00 hour by Desai: \$1,250); mediation questionnaire (3.70 hours by Desai: \$4,625); opposition to motion to stay (7.20 hours by Desai: \$9,000); discovery requests (e.g., RFPs, 30(b)(6) depositions: 2.00 hours by Nava: \$580).
- April-June: Appellate briefs (e.g., Answering Brief: 6.00 hours by Desai: \$7,500; drafting by De Castro: multiple entries totaling ~\$20,000); streamlined extensions.
- July-September: Oral argument preparation (10.00 hours by Desai: \$12,500); acknowledgments of hearing notices.
- October-December: Oral argument (2.70 hours by Desai: \$3,375); Ninth Circuit opinion affirming denial (5.00 hours by Desai: \$6,250); petition for rehearing.

Notable Phase: First Ninth Circuit appeal; stay of district court proceedings pending appeal.

2022 (SCOTUS Petition and Remand – Total Billed: ~\$100,000)

Focus: Motion to stay mandate, SCOTUS certiorari petition, remand in light of *Saxon*.

1 **Key Entries:**

- 2 ○ January-May: Motion to extend time for cert petition (0.70 hours by
3 Desai: \$875); analysis of SCOTUS extension letter (0.70 hours by
4 Desai: \$875).
- 5 ○ June-August: Cert petition analysis (7.70 hours by Desai: \$9,625);
6 amicus briefs (e.g., Chamber of Commerce: 6.70 hours by Desai:
7 \$8,375); opposition to cert (7.35 hours by Desai: \$9,188).
- 8 ○ September-November: Coordination of opposition papers (2.00 hours
9 by Desai: \$2,500); SCOTUS grant of cert, vacate, and remand (4.35
10 hours by Desai: \$5,438); new Ninth Circuit briefing schedule (2.70
11 hours by Desai: \$3,375).
- 12 ○ December: Appearances by new Domino's counsel (1.80 hours by
13 Desai: \$2,250).

14 **Notable Phase:** Escalation to SCOTUS; influence of *Saxon* on FAA
15 exemption for delivery drivers.

16 **2023 (Post-Remand Appeals and New Claims – Total Billed: ~\$250,000)**

17 **Focus:** Supplemental briefs, second Ninth Circuit oral argument, second
18 SCOTUS petition, addition of new plaintiffs (e.g., Tom Arriola), PAGA letters.

19 **Key Entries:**

- 20 ○ January-June: Supplemental briefs (7.30 hours by Desai: \$9,125);
21 PAGA letters (3.03 hours by De Castro: \$2,878); oral argument
22 preparation and attendance (3.20 hours by Desai: \$4,000); client intakes
23 (e.g., Tom Arriola: 1.40 hours by Desai: \$1,750).
- 24 ○ July-September: Ninth Circuit affirmation (8.10 hours by Desai:
25 \$10,125); motion to stay mandate (6.00 hours by Desai: \$7,500); FAC
26 for Labor Code claims (5.70 hours by Desai: \$7,125); opt-out notices
27 for arbitration (1.50 hours by Nava: \$435).
- 28

- 1 ○ October-November: Second SCOTUS cert petition (6.00 hours by
2 Desai: \$7,500); amicus outreach (0.70 hours by De Castro: \$665).

3 **Notable Phase:** Consolidation with Arriola claims; renewed interstate
4 commerce analysis post-*Saxon*.

5 **2024 (Consolidation and Scheduling – Total Billed: ~\$50,000)**

6 **Focus:** Consolidated complaint, Rule 26 conferences, initial disclosures,
7 related cases.

8 **Key Entries:**

- 9 ○ May-July: Analysis of merits on remand (3.70 hours by Desai: \$4,625);
10 drafting consolidated complaint (4.00 hours by Desai: \$5,000;
11 additional by De Castro: ~\$3,000); Joint Status Report (0.66 hours by
12 De Castro: \$628).
13 ○ August-December: Notice of related cases (1.30 hours by Desai:
14 \$1,625); initial disclosures (1.00 hour by De Castro: \$950); amended
15 scheduling orders (2.70 hours by Desai: \$3,375).
16

17 **Notable Phase:** Case consolidation and procedural adjustments post-appeals.

18 **2025 (Settlement and Approval – Total Billed: ~\$385,000)**

19 **Focus:** Discovery, amended complaints, mediation, preliminary approval
20 motions, attorney fees.

21 **Key Entries:**

- 22 ○ January-April: Joint stipulations for amended complaints (2.20 hours by
23 Desai: \$2,750); discovery responses (multiple by De Castro: ~\$10,000);
24 client calls (2.60 hours by Desai: \$3,250).
25 ○ May-July: Protective orders (2.60 hours by Desai: \$3,250); discovery
26 indexing (4.00 hours by De Castro: \$3,800); stipulations to amend
27 scheduling (1.00 hour by Desai: \$1,250).
28

- August-September: Mediation preparation (10.00 hours by Desai: \$12,500); full-day mediation in LA (13.70 hours by Desai: \$17,125; 9.00 hours by De Castro: \$8,550; 10.00 hours by Nava: \$2,900); damages matrix (3.00 hours by De Castro: \$2,850); client Zoom calls (3.70 hours by Desai: \$4,625).
- October: Motions for preliminary approval and attorney fees (5.70 hours by Desai: \$7,125; multiple by De Castro: ~\$10,000); billing spreadsheets for fees (5.00 hours by Nava: \$1,450).

Notable Phase: Culmination in settlement; focus on approval papers and class data analysis.

QUALIFICATIONS OF CLASS COUNSEL

13. I have litigated numerous class and collective actions throughout my more than 28 years of legal practice. The firm’s CV is available at www.desai-law.com. The following partial list of cases is included for the Court’s review:

- *Ellmore v. DiTech Funding*, case number SACV-01-93. This was one of the first class and collective actions in the Central District of California federal court on behalf of loan officers and processors who were denied overtime wages under both the UCL and FLSA. We were co-lead counsel in this prosecution with Saperstein, Goldstein, Demchak & Baller. After a year of litigation, during which the case split into two parts, a global, combined settlement was reached for approximately \$9.65 million. Judge David O Carter of the U.S. District Court of California issued final approval and the case is now over.
- *Toothman v. Pre-Paid Cellular*, District Court, City and County of Denver Colorado, case number 01-CA-1142. This was a nationwide securities fraud class action on behalf of approximately 5,000 investors who were separated from \$53 million as a result of a sophisticated con game involving a major, silk-stocking Chicago firm. The case was resolved and finally approved in Colorado District Court after the Denver Court of Appeals reversed a ruling denying class certification.

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- *Parks v. Eastwood Insurance Services, Inc.*, Case No. SACV 02-0507. This was a collective class action under the FLSA for unpaid overtime wages on behalf of sales agents who were employed by Eastwood Insurance. After three and one-half years of vigorous litigation, this action resolved for \$1.2 million for the class members. The defendants, however, would not agree to our fee application, thereby forcing comprehensive law and motion work on this issue. On July 2005, the Honorable Gary L. Taylor (Ret.) issued a ruling awarding my firm approximately \$2.1 million in attorneys' fees, in addition to the \$1.2 million obtained on behalf of the class members. The Ninth Circuit Court of Appeals affirmed this ruling. *Parks v. Eastwood Insurance, Inc.*, 240 Fed. Appx. 172 (9th Cir. 2007).
 - *Dzierlatka v. Bristol-Meyer Squibb*, case number BC076039. This was a nationwide antitrust action charging Bristol-Meyer Squibb of illegal efforts to block generic rivals to its cancer treatment drug Taxol. This case resulted in a nationwide settlement for third-party payors of approximately \$115 million. I served as coordinating counsel for the California class members. The case was given final approval several years ago.
 - *Robinson v. MJM Investigations*, case number SACV08-496 JVS (RNBx). This was a nationwide wage and hour suit on behalf of field Investigators. After three years of litigation, two separate lawsuits, discovery battles, and one trip to the Ninth Circuit, MJM agreed to a global resolution of over \$2.5 million. The Court approved of the settlement and seemed pleased with the results and conduct of the parties.
 - *Cardenas v. McLane Foodservice, Inc.*, case number SACV10-473-DOC (FFMx). This was a one of the first truck driver cases to challenge the trucking industries pay practices in California. It resulted in several published decisions including one dealing with the piece-rate system for activity-based pay and FAAAA preemption. *Cardenas v. McLane Foodservice, Inc.*, 796 F.Supp.2d 1246 (C.D. Cal 2011). This case was resolved for \$5.5 million.
 - *Burnham, et al. v. Ruan Logistics, Corp.*, case no. SACV12-0688 AG (ANx). This was a California class action challenging a trucking company's pay practices, and meal and rest break policies. The case was resolved for \$3.5 million.

1 > *Adolph v. Uber Technologies*, 14 Cal.5th 1104 (2023) (allowing PAGA
 2 representative standing following *Viking River*). We serve as co-lead
 3 counsel for Plaintiffs in this case, argued before the California Supreme
 4 Court, that saved PAGA from federal preemption under the FAA.

5 14. Simply put, my firm and I have successfully prosecuted a host of class
 6 and collective actions, including wage and hour cases against Genesis Logistics, Uber
 7 Technologies, Penske Logistics, Indian River Transport, JB Hunt, MBM Trucking,
 8 Tuesday Morning, FirstPlus Financial, Platinum Capital Group, Centerpoint
 9 Mortgage, IndyMac Bank and Pacific Coast Funding. Currently, we maintain a
 10 number of wage and hour and consumer cases in both state and federal court.

11 15. I have written extensively on the subject of class and collective actions,
 12 including:

Date	Title	Publication
Nov. 8, 2001	Class Clout – Attorneys Should Not Overlook Federal Overtime Law	<i>Los Angeles Daily Journal</i>
Nov. 2001	Revenge of the Wage Slave – Class Action Overtime Cases	<i>Orange County Lawyer Magazine, Vol. 43, No. 11</i>
2001	Wage & Hour Compendium of Overtime Pleadings and Documents	<i>(Book/Compendium)</i>
Feb. 22, 2002	Analysis & Perspective – Class Action Overtime Cases	<i>Class Action Litigation Report(BNA), Vol. 3, No. 4</i>
Jul. 12, 2002	Analysis & Perspective – The Discovery Conundrum in Fair Labor Standards Act Collective Actions	<i>Class Action Litigation Report(BNA), Vol. 3, No. 13</i>
Jul. 25, 2002	Discovery in Overtime Class Actions Often is Prevented Before Certification	<i>Los Angeles Daily Journal</i>
Aug. 2002	The Discovery Problem	<i>Orange County Lawyer Magazine, Vol. 44, No. 8</i>

1	Oct. 21, 2002	Fee-Shifting in Overtime Wage Statute Trumps Contract's Attorney-Fee Clause	<i>Los Angeles Daily Journal</i>
2			
3	Nov. 2002	Legislative Attorney's Fees Under the FLSA – The Trump Card	<i>Orange County Lawyer Magazine, Vol. 44, No. 11</i>
4			
5	Jan. 10, 2003	Analysis & Perspective – Employment Class and Collective Actions	<i>Class Action Litigation Report(BNA), Vol. 4, No. 1</i>
6			
7	Jan. 17, 2003	Analysis & Perspective – Fees in Class Actions	<i>Wage Hour & Leave Report(BNA), Vol. 2, No. 1</i>
8			
9			
10	Sept. 12, 2003	Federal Class Action Overtime Cases – Can You Really Get Double Damages?	<i>Class Action Litigation Report(BNA), Vol. 4, No. 17</i>
11			
12	Feb. 20, 2004	Bazzle Confounds Arbitration Agreements and Class Actions	<i>Los Angeles Daily Journal</i>
13			
14	Aug. 2004	Master of the Complaint – The Role of Class Counsel	<i>Orange County Lawyer Magazine, Vol. 46, No. 8</i>
15			
16	Spring 2005	A Solution in Search of a Problem – The Class Action Fairness Act of 2005	<i>Texas Business Litigation, Business Torts</i>
17			
18			
19	Jun. 2006	Striking the Answer in Class Actions is Easier Than You Think!	<i>Orange County Lawyer Magazine, Vol. 48, No. 6</i>
20			
21	Dec. 2006	Late to Class – What to Do With “Untimely” Opt-In Forms in Collective Class Actions?	<i>Orange County Lawyer Magazine, Vol. 48, No. 12</i>
22			
23	Nov. 2007	Defendants Bear a Heavy Burden To Prove The Amount In Controversy Under The Class Action Fairness Act of 2005	<i>Orange County Lawyer Magazine, Vol. 49, No. 11</i>
24			
25			
26	Jul./Aug. 2008	Class Confirmation – Settlement Issues (MCLE Feature Article)	<i>Los Angeles Lawyer Magazine</i>
27	Aug. 25,	Class Confusion	<i>Los Angeles Daily</i>
28			

2009		<i>Journal</i>
Sept. 2009	Pickoff Moves (Cover Story)	<i>Los Angeles Lawyer Magazine</i>

16. I served as an Adjunct Professor at Chapman University School of Law, teaching legal research and writing from 2004-2006. Furthermore, I have been invited to, and do, speak at numerous seminars on class action litigation for National Business Institute, the Orange County Employment Litigation Section Bar, Los Angeles Bar Association, Bridgeport Seminars, National Association of Attorney Fee Litigators, California Employment Lawyers Association, and the California Bar Association. Many of my peers consider me an expert in the field of class action litigation, particularly in federal and state wage and hour cases.

17. I was selected as a “Rising Star” in Class Action Litigation by *SuperLawyers Magazine* in 2005, 2006 and 2007 – a privilege reserved for only 5% of the “Best Young Lawyers in Southern California.” I have been selected as a “Super Lawyer” every year since 2008. I am a co-author of a leading CEB practice manual entitled *California Wage, Law and Litigation* (Regents of University of California 2010-present). I serve as an Associate Chapter Editor for *The Fair Labor Standards Act*, published by BNA (Kerns) (2012-present). Recently, I wrote a legal novel based upon a PAGA class action involving a group of truck drivers who sue their employer in federal court. *A Class Action*, Desai, Aashish (2021) (Kindle, Amazon, Audible). I consider my focus to be wage and hour class action law, which I have practiced in California since 1997.

18. My billing rate is \$1,250.00 per hour, which is usual and customary for class action practitioners in my field. The billing rate of my senior associate, Adrienne De Castro -- a 2005 graduate from U.C. Berkeley School of Law -- is \$950.00 per hour, which is usual and customary for attorneys with her experience level. The rates at DLF have been, over the years, approved by many judges.

1 2023, the Ninth Circuit ruled that *Saxon* was not inconsistent “let alone irreconcilable
2 with *Rittman*” which controls analysis.

3 23. Accordingly, the Ninth Circuit affirmed the district court ruling denying
4 Domino’s Motion to Compel. In October 2023, Domino’s filed another petition for
5 writ of certiorari to U.S Supreme Court, further staying the case. In April 2024, the
6 petition for certiorari was denied and the case was finally returned to the district
7 court.

8 **THE ARRIOLA LITIGATION**

9 24. While these appeals were pending and to ensure Domino’s drivers’
10 claims could be timely adjudicated, Plaintiff Thomas Arriola filed an unverified class
11 action complaint in the United States District Court, Central District of California on
12 July 28, 2023 to assert Labor Code claims for additional Domino’s drivers. These
13 claims included claims for unpaid wages, wage statement claims, waiting time
14 claims, and claims under the Unfair Competition Law. On August 28, 2023,
15 Plaintiffs filed a first amended complaint (“FAC”) (Dkt. 14), which named June
16 (Burnett) Brulee, Gregory Diaz, Daniel Etchpare, and Raul Quiroz as additional
17 named plaintiffs. In November 2023, Plaintiffs filed a second amended complaint to
18 assert claims under the Private Attorney General Act (“PAGA”). This case was also
19 stayed pending the appeals in the *Carmona* litigation.

20 **THE CONSOLIDATED COMPLAINT**

21 25. Once the appeals were resolved in April 2024, the parties filed a Joint
22 Notice of Related Cases on June 7, 2024, regarding this matter and *Carmona* (Dkt.
23 No. 32). The Court deemed the cases related and transferred the matter to this Court
24 in on June 17, 2024. (Dkt. No. 35). Since the parties agreed that *Arriola* and *Carmona*
25 cases have overlapping issues and coordination was necessary to litigate both cases,
26 the parties agreed to filed a Consolidated Complaint, combining the parties, claims,
27
28

1 and allegations in both cases. The Court granted the parties stipulation to Plaintiffs
2 filed a Consolidated Complaint in August 2024. (Dkt. No. 35).

3 26. In April 2025, Plaintiffs filed an Amended Consolidated Complaint
4 adding claims that drivers were not paid for time spent working while in the sleeper
5 berth. (Dkt. No. 50).

6 **SIGNIFICANT DISCOVERY**

7 27. The appellate litigation in this case has been time and labor-intensive
8 with multiple trips to the Ninth Circuit and the U.S. Supreme Court. Once litigation
9 ultimately resumed in April 2024, the Parties propounded and produced significant
10 discovery including special interrogatories, requests for production, requests for
11 admissions, and initial disclosures. The Plaintiffs also propounded deposition
12 notices. The Parties were working diligently towards class certification briefing and
13 trial according to the Court's Scheduling Order. Dkt. Nos. 44-45.

14 28. Plaintiffs also sought the contact information for the putative class
15 members and worked cooperatively with Domino's to prepare and ultimately
16 disseminate a *Bel-Aire West Notice* to obtain putative class member information. Dkt.
17 No. 56. We also maintained testimony and depositions from the *Silva* case where my
18 firm took the FRCP 30(b)(6) deposition of Domino's corporate representative. The
19 information from *Silva* was critical and necessary to this action. First, the FRCP
20 30(b)(6) deposition formed the factual basis for *Carmona's* arbitration fight
21 (establishing mushrooms, for example, came from out-of-state); *Silva's* corporate
22 deposition (and other discovery) also formed part of the basis for liability (i.e., use
23 of estimates for pre-shift work) during the recent mediation with Joel Grossman.

24 29. Domino's also produced over 15,000 pages of discovery that Plaintiffs
25 had to analyze and organize. Similarly, Plaintiffs worked diligently to provide
26 documents and detailed responses to Domino's discovery including providing details
27 estimates of their damages in this case. The result was lengthy and substantial
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1 discovery responses for the eight Named Plaintiffs at that time, including several
2 hundred pages of document production.

3 30. After years of appeals, and substantial merits discovery, Plaintiffs were
4 preparing to move for class certification. While the Parties were preparing for class
5 certification, Plaintiffs sought to add named plaintiffs to assert claims on behalf of
6 non-drivers, hourly workers who staffed Domino’s distribution centers and
7 warehouses. Plaintiffs understood these workers had potential claims for overtime,
8 meal and rest break violations, violation of the 4/10 alternative workweek schedule
9 and unpaid wages.

10 31. Given the many years of litigation and the potential for additional time
11 and resources expenditure from both sides, the Parties agreed to attend mediation in
12 an attempt to settle the entire case. Dkt. Nos. 59-60. The Parties attended an all-day,
13 in-person mediation session on September 25, 2025, with Joel Grossman, a
14 professional mediator with extensive expertise in wage and hour class actions. Mr.
15 Grossman’s CV from JAMS shows that he has been “exclusively devoted to
16 mediation and arbitration since 2004 following his 25-year legal career as a litigator.”
17 It further notes that he has presided over “more than 1500 mediations and arbitrations
18 and developed a stellar reputation for fairness.” The Parties reached an agreement at
19 the end of the day with the help and oversight of Mr. Grossman.

20 32. Throughout the litigation, I made numerous attempts to find a way to
21 seek a resolution of the underlying claims while preserving their rights to move
22 forward. It was not easy and no settlement was reached.

23 33. At all times during the negotiation process, counsel for Plaintiffs and the
24 Defendant bargained vigorously and at arm’s length on behalf of their clients. All
25 Class Representatives support this Settlement.

26
27 **BASIS FOR SETTLEMENT**

28 34. The parties’ negotiations focused on several issues including class

1 certification, the arbitration agreements, the potential that the Court would grant
2 summary judgment to Domino's. Domino's non-exempt, hourly workers were
3 subject to arbitration agreements that could preclude litigation altogether and
4 potentially preclude class-wide discovery. Furthermore, this same Court granted
5 Domino's Motion for Summary Judgment in *Silva v. Domino's Pizza, LLC*, Case No.
6 SACV 18-2145 JVS (JDEx) on Silva's unpaid wages claim under Cal. Labor Code §
7 226.2(a)(1). The Court ruled that, under California law, there is a presumption that
8 employees are not working when they are clocked out. The Court explained that to
9 rebut this presumption, an employee must show that his employer "knew or should
10 have known off-the-clock work was occurring."

11 35. The Court granted Domino's summary judgment motion ruling that
12 Silva failed to produce evidence that Domino's knew or should have known he was
13 working off the clock. This ruling placed Plaintiffs' unpaid wage claims in peril as
14 this very same Court may reach the same conclusion here, even though Plaintiffs
15 would of course marshal evidence about Domino's knowledge of the off-the-clock
16 time.

17 36. The parties also faced the risk of the Supreme Court's ruling in *Camp v.*
18 *Home Depot U.S.A., Inc.*, 84 Cal.App.5th 638 (2022). *Camp* holds that an employer's
19 use of "estimates" is unlawful in any workplace where the capturing of time to the
20 exact minute is practicable is currently pending before the California Supreme Court.
21 Depending on how the Supreme Court ruled, either Party will be affected. All these
22 potential issues informed the discussion at mediation.

23 37. The damages in this case were evaluated with data from Domino's and
24 reasonable assumptions. My firm used Domino's payroll records to calculate
25 potential damages, meaning the estimated exposure described below is based on
26 concrete, data-driven analysis. For example, Domino's produced 25% of the meal
27 break records for the warehouse workers. Almost all shifts included at least one rest
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1 break and one meal break, as required. Some exceptions (e.g., "Forgot to Punch 2nd
2 Meal," "Worked through lunch") were noted, particularly for IDs 15, 29, and 111,
3 which showed some minor violations and areas for improved timekeeping or
4 compliance. The timecard data, however, overall aligns with typical retail or service
5 industry shift patterns.

6 7 RECOVERY FOR NON-PAGA DRIVERS' CLAIMS

8 38. **Unpaid wages:** Plaintiffs estimate that drivers worked approximately 2
9 hours of unpaid hours (i.e., pre/post-shift duties, tray pick-ups) in a week, and 2
10 unpaid hours working in the sleeper berth. Based on Domino's data, the total work
11 weeks for 249 Class Members is 29,783, at an hourly rate of \$44. Based on this data,
12 Plaintiffs estimate that the unpaid wage claims (for non-driving work, and time spent
13 working in the sleeper berth) is approximately \$5,241,808 (29,783 weeks x 4 hours
14 x \$44) million, and double for liquidated damages to bring the total to \$10,483,616.

15 39. **Waiting Time Penalties:** Labor Code § 203 provides a penalty of up
16 to thirty days' pay where an employer willfully fails to pay an employee all owed
17 wages at the time of separation. Using an estimate of 1/3 of the class as former
18 employees (totaling 89) and an average 8-hour day, and the 30-day maximum
19 penalty, Plaintiffs estimated that the waiting time penalties for the non-PAGA drivers
20 to be approximately \$937,170.

21 40. **Reimbursement Claims:** Labor Code § 2802 requires employers to
22 reimburse employees for all necessary expenses and losses incurred by the employee
23 in direct consequence of their duties, including expenses for personal cell phones.
24 Plaintiffs assumed an average of \$100 a month for cell phone bills, 10% of cell phone
25 usage for work-related matters, and 39 months in the class period. Plaintiffs estimate
26 the cell phone reimbursement claim is worth approximately (\$10/month x 39 months
27 x 249 members) = \$97,110.

1 41. **Inaccurate Wage Statement Claim:** California Labor Code § 226
2 requires employers to provide accurate itemized wage statement. Failure to do so
3 results in a maximum penalty of \$4,000 per employee. Assuming 249 class members
4 with the maximum penalty, plaintiffs estimate this claim is worth approximately
5 \$996,000.

6 42. In sum, the maximum exposure for the non-PAGA drivers' claims is
7 approximately \$12,513,896. The \$2.3 million settlement amount represents
8 approximately 18% of the total maximum exposure for the non-PAGA drivers' Labor
9 Code claims. This is a strong recovery given the risks of prevailing on liability and
10 recovering the maximum possible damages and penalties, placing the Settlement well
11 within the range of reasonableness.

12 43. Given the estimated total exposure and the risks that Plaintiffs would
13 face in attempting to win on all arguments much less certify the class, the \$2.3 million
14 Total Settlement Amount is a robust recovery.

15 **RECOVERY FOR NON-DRIVER LABOR CODE CLAIMS**

16 44. **Unpaid Wages:** Plaintiffs estimated that non-driver hourly workers
17 worked 7.5 hours unpaid hours week, at an average hourly rate of \$24 for 30,065
18 work weeks for 457 class members. Domino's provided data on the hourly rate, work
19 weeks, and total class members. Based on this information, Plaintiffs estimate
20 (30,065 x 7.5 x \$24) \$5.4 million in unpaid wage claims and another \$5.4 million for
21 liquidated damages.
22

23 45. **Overtime/Alternative Work Week Claims:** Plaintiffs used an estimate
24 of approximately 0.5 hours of overtime per shift, multiplied by half of the total shifts
25 worked by non-drivers (approximately 64,183 shifts). Using a \$24 hourly rate, and
26 an overtime rate of \$36, Plaintiffs estimate the overtime claim to be worth
27 approximately (16,045 hours x \$36) = \$577,620.
28

1 46. **Meal and Rest Break Penalties:** Labor Code §§ 226.7 and 512 require
2 employers to provide employees with a 30-minute, uninterrupted meal break on all
3 shifts of 5 hours or more and a 10-minute rest period for all shifts of three and a half
4 hours or more. Plaintiffs' estimate that hourly non-exempt workers missed their meal
5 and rest breaks for approximately 5% of the shifts in the class period, for a total of
6 64,183 shifts where a violation may have occurred. Therefore, they estimate the
7 premium payments owed to them is approximately (3,209 shifts x \$24) = \$77,016.

8 47. **Waiting Time Penalties:** Labor Code § 203 provides a penalty of up
9 to thirty days' pay where an employer willfully fails to pay an employee all owed
10 wages at the time of separation. Using an estimate of 1/3 the class as former
11 employees (152), an average 8-hour day, the 30-day maximum penalty, and a
12 minimum daily rate of \$192, Plaintiffs' estimate the waiting time penalties for the
13 non-drivers to be approximately \$875,520.

14 48. **Inaccurate Wage Statement Claim:** Labor Code § 226 requires
15 employers to provide accurate itemized wage statement. Failure to do so results in a
16 maximum penalty of \$4,000 per employee. Assuming 457 class members with the
17 maximum penalty, Plaintiffs estimate this claim is worth approximately \$1.8 million.

18 49. In sum, the maximum total exposure for non-driver wage and hour
19 claims, excluding PAGA claims, is approximately \$14,181,556. The \$2.3 million
20 Settlement represents approximately 16% of this amount, a strong recovery given the
21 arbitration agreements that could have wiped away these claims entirely. Given that
22 the amounts of the non-PAGA drivers' claims and non-driver labor code claims were
23 (fairly) equal with various risk factors applying to each class, a 50/50 split of the net
24 settlement fund is fair and reasonable.

25 50. The PAGA penalties totaled \$5,984,800 (59,848 work weeks x \$100).
26 This estimate of course assumed full liability and zero reduction of damages and
27 penalties. However, (i) it is highly unlikely this Court would award full PAGA
28

1 penalties, (ii) the non-hourly, exempt workers' claims in Court would be barred by
2 the arbitration agreements; (iii) all the claims were not certified, and (iv) delay by
3 appeal make settlement and the risk discounts appropriate.

4 51. The global settlement amount of \$2,300,000.00 is therefore a very good
5 result for the class, particularly given the present value of receiving these funds now
6 as opposed to the prospect of litigation, which could easily result in many additional
7 years of delay because of appeals.

8 52. This is an example of how, I believe, we have considered the interests
9 of the class members. The terms of the settlement are fair. My office has reviewed
10 and analyzed thousands of pages of documents, sat through many hours of
11 depositions, reviewed almost all the case law and legal defenses available to the
12 trucking industry, analyzed employment files including payroll records, timekeeping
13 records, and witness statements.

14 53. In the end, I believe that the terms of the settlement with immediate
15 payout and no risk, as outlined in the moving papers, are good for the class members.
16 It resolves all the claims that were set for trial and the class, which consists of blue-
17 collar piece rate workers are expected to receive an average settlement of
18 approximately \$2,304 (\$573,723/249), \$1,255 (\$573,723/457). This figure is an
19 estimate based upon the raw data that Domino's and its lawyers have given to us.
20 Specifically, this figure is based upon 29,783 workweeks for drivers, and 30,065 for
21 non-drivers, into a net settlement of approx. \$1,242,447.

22 54. In addition, the settlement is good for the State of California. Since
23 Plaintiffs were prosecuting their Private Attorney General Act Claims ("PAGA") as
24 a proxy for the state, the settlement provides that \$20,000 will be paid to the Labor
25 Workforce Development Agency ("LWDA") with \$15,000 (75%) going to the state
26 and the remainder distributed to the aggrieved employees. I have submitted a copy
27 of the Stipulation of Class Settlement to the LWDA and will serve a copy of the
28

1 Preliminary Approval Motion to the agency for comment. I fully expect, based upon
2 my many dealings with the LWDA, that they will be very happy with both our efforts
3 and the amount they will be receiving in PAGA penalties.

4 55. Settlement is compromise. Here, the reasonableness of the settlement
5 is underscored by the fact that the Court could issue a final judgment that largely
6 reduces the total PAGA penalties available to the Plaintiffs. While we disagree that
7 reduction is appropriate, litigation would be costly and time consuming with appeals
8 likely. In the end, we could lose our arguments, and the class could receive little
9 money to redress their claims.

10 **ARM’S-LENGTH BARGAINING**

11 56. The settlement was reached through arms-length bargaining, with
12 sufficient investigation and discovery to allow a cogent evaluation. Indeed, as noted,
13 we participated in a full-day, in-person mediation (and many pre-mediation phone
14 calls over several days) with the guidance and assistance of well-respected mediator
15 Joel Grossman. Counsel – on both sides of the fence – are experienced class action
16 litigators with decades of experience. Each of the Class Representatives supports the
17 settlement.

18 **PARTICIPATION PAYMENTS**

19 57. We are seeking reasonable participation payments for the ten
20 Representative Plaintiffs who began this litigation. Several of these plaintiffs
21 individually initiated and litigated for several years. Each of these Plaintiffs took
22 significant risks in bringing this lawsuit. Some of them are current, long-time
23 employees of Domino’s and therefore faced the very real fear of retaliation in the
24 workplace.

25 58. These Plaintiffs were also subject to substantial discovery. Each of the
26 Plaintiffs also assisted in bringing this case and preparing for mediation by providing
27 information and declarations.
28

